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09/750,833	12/29/2000	Don Eden Hale	10010039-1	9194

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AGILENT TECHNOLOGIES  
Legal Department, 51U-PD  
Intellectual Property Administration  
P.O. Box 58043  
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EXAMINER

NGUYEN, TAN D

ART UNIT PAPER NUMBER

3629

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/750,833	<b>Applicant(s)</b> HALE ET AL.	
	<b>Examiner</b> Tan Dean D. Nguyen	<b>Art Unit</b> 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-12 and 14-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed 9/13/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

Claim 1, “ .. to interact with other components of the virtual business model, all members of said manufacturer alliance being configured to perform a same type of operations”, “ .. to interact with other components of the virtual business model, all members of said distributor alliance being configured to perform a same type of operations”.

Similarly, claim 2, 11, and 12 are objected for the same reasons set forth in claim 1 above. The examiner has scanned the specification for the language of “all members of said manufacturer alliance (or distributor alliance) being configured to perform a same type of operations” and has not been able to identify these critical limitations.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Terminal Disclaimer***

2. The terminal disclaimer filed on 9/13/05 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of copending application 10/117,471 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Claim Rejections - 35 USC § 101***

**3. 35 U.S.C. 101 reads as follows:**

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent thereof, subject to the conditions and requirements of this title.

4. As an initial matter, the United States Constitution under Art. 1, §8, cl. 8 gave Congress the power to "[p]romote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". In carrying out this power, Congress authorized under 35 U.S.C. §101 a grant of a patent to "[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition or matter, or any new and useful improvement thereof." Therefore, a fundamental premise is that a patent is a statutorily created vehicle for Congress to confer an exclusive right to the inventors for "inventions" that promote the progress of "science and the useful arts". The phrase "technological arts" has been created and used by the courts to offer another view of the term "useful arts". See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of whether an invention is eligible for a patent is to determine if the invention is within the "technological arts".

5. Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions (3) include (1) "laws of nature", (2) "natural phenomena", and (3) "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an

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invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Sirattire Financial Group, Inc.* 149, F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

6. Mere idea in the abstract (i.e. abstract idea, law of nature, natural phenomena) that do not apply, involve, use or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e. physical sciences as opposed to social sciences, for example), and therefore are found to be non-statutory subject matter. For a process to pass muster, the recited process must somehow apply, involve, use or advance the technological arts.

7. This "two-prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the *Freeman-Walter-Abele* test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175, USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

8. The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter is statutory, not on whether the product of the claimed subject matter is statutory, not on whether the prior art which the claimed subject matter purports to

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replace is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., but whether it "enhances" the operation of a machine. In re Toma at 857.

9. In Toma, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

10. The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co. at 1374*. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "whether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co. at 1377*. Both of these analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma*. However, *State Street* never addressed

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the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within the technological arts under the *Toma* test. This dichotomy has been recently acknowledged by the Board of Patent Appeals and Interferences (BPAI) in affirming a j101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman*, 61 USPQ2d (BNA) 1669 (BPAI 2001).

11. Thus the present basis for a 35 USC 101 inquiry is a 2-prong test:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

12. **Claims 11-12, 14-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

As to the 2<sup>nd</sup>-prong test, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case, as to claim 11, which deals with a virtual business model (or plan or idea), this is merely a combination of abstract ideas or plans and not things (product or item or composition) nor method/steps. Thus they are not concrete and tangible and are non-statutory.

See also (1) *In re Schrader*, 22 F.3d 290, 30 USPQ2d 1455 (CCPA 1994), (2) *In re Alappat*, 33 F.3d at 1544, 31 USPQ2d at 1557, (3) *In re Waldbaum*, 173 USPQ 430 (CCPA 1972), (4) *In re Musgrave*, 167 USPQ 280 (CCPA 1970), and (5) *In re Johnston*, 183 USPQ 172.

***Claim Rejections - 35 USC § 112***

**13. Claims 1-2, 4-10 (method), 11-12, 14-20 (model) are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

(1) In claim 1, line 7, the phrase “to interact with other components of the virtual business model” is vague because it’s not clear “what are the other components?”.

(2) In claim 1, lines 12-13, the phrase “to interact with other components of the virtual business model” is vague because it’s not clear “what are the other components?”.

(3) Claim 1 recites the limitation “the virtual alliances” in line 17, 20 and 28. There is insufficient antecedent basis for this limitation in the claim.

(4) In claim 11, line 6, the phrase “to interact with other components of the virtual business model” is vague because it’s not clear “what are the other components?”.

(5) In claim 1, line 11, the phrase “to interact with other components of the virtual business model” is vague because it’s not clear “what are the other components?”.

(6) Claim 11 recites the limitation “the virtual alliances” in line 16, 19 and 27. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –



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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**2. Claims 11, 12, 14-20 (model) are rejected under 35 U.S.C. 102(b) as being anticipated by VAN HOEK or HAMMER.**

As for independent claim 11 which deals with a product (model) transact business for a product, this model reads over the virtual business model of VAN HOEK see page 1, lines 23-40 or HAMMER, page 1, lines 1-10. As for the different elements listed in claim 11, (a) a computer-implemented virtual manufacturer alliances, (b) a computer-implemented virtual distributor alliances, (c) a plurality of a computer-implemented virtual flows, (d) a contracting business, these carry no patentable weight because they are not physical features but merely nonfunctional descriptive material (data/information) and thus carry no patentable weight. If the model is a computer program then the claim language must be modified to include connection to a processor with a plurality of processor-executable instructions recorded on signal-bearing media, wherein the instructions, when executed by the processor of an a computer system would cause the computer system to performs the following steps.

Dependent claims 12, 14-20 (part of 11), which merely further limit the nonfunctional descriptive material (information/idea/data) of claim 11 above, carry no patentable weight for the same reason set forth above.

***Claim Rejections - 35 USC § 103***

**3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**4. Claims 1-2, 4-10 (method), 11-12, 14-20 (model) are rejected under 35 U.S.C. 103(a) as obvious over (1) VAN HOEK (Article “Logistics and virtual.... Information”, 1998) alone or further in view of (2) HAMMER (Article “The rise ...the rest”, March 2000).**

**As for independent method claim 1**, VAN HOEK discloses a computed-implemented method of using a business model of virtual integration to transact business process for a product in a virtually integrated supply chain management (or SCM) throughout the entire chain {see page 1, lines 46-48 “*in purchasing, manufacturing, and shipping* (distributing)} comprising the steps of:

a) providing a virtual business function (manufacturing) alliance (or **partnering or cooperation** among **various players**) comprising members wherein the members are interacting with each other by computers (see page 2, paragraphs 3-4, or lines 38-39 for “outsourcing, partnering and co-operation among various players”, page 6, 3<sup>rd</sup> paragraph, page 7, 4-6 paragraphs),

b) providing a virtual business function (distributing) alliance (or partnering) (“(1) outsourcing, (2) partnering and (3) co-operation among various players”), and every virtual distributor alliance (partnering) member can interact with each other by computers and being configured to perform operations associated with distribution of the manufactured product {see page 8, lines 7-10, “*five interregional distribution centers ... will supply the dealer with the requested car within as order-to-delivery*”};

c) providing a plurality of virtual communication flows (dialogue or interchange or conversation) for enabling electronic communication between the virtual alliances (partners) for use in the 1<sup>st</sup> function (manufacture) and 2<sup>nd</sup> function (distribution) of the product, the virtual flows having access to the virtual alliances (partnering) at each stage of the manufacture and distribution of the product, the virtual flows managing a flow of information along the virtual flows between alliance members {see page 1, abstract "extensive involvement of suppliers and distributors, and the integration of the flow of information", page 2, lines 1-7, 41, 52-53, page 6, line 20, page 9, lines 1-5};

d) providing a contracting business for coordinating operations of virtual alliances (partnering and cooperating players) {see page 1, line 49 "outsourcing and sub-contracting" and lines 38-39 "outsourcing, partnering and co-operation among various players"; and

e) using the contracting business to establish, via the virtual flows, control over well known 1<sup>st</sup> and 2<sup>nd</sup> business functions (manufacturing and distribution of product) by the plurality of virtual alliances (partnering and cooperating players) { page 2, lines 1-5 "company achieves control ... by mastering the flow of information", page 8, lines 32-35 "maintains control over the supply chain by controlling and integrating the flow of information"}.

As for the limitation of "all members of the alliance being configured (is **equipped** or **capable of**) to perform a same type of operations", this is not positively claimed in a method claim since it merely further limits an "object" or "members" in the step and not "providing" in this case. Also, "being configured" merely means "being equipped" or

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"having a capacity" to do something, such as performing a same type of operation associated with manufacturing or distribution of product, thus having little or nearly no patentable weight in a method claim. Moreover, this is inherently taught in VAN HOEK pages 2, 3 with an example on page 7, par. 4-6, , "...number of 1<sup>st</sup> tier suppliers of which seven are fully integrated into the final assembly plant", .."... together these seven suppliers supply 50% of the total value of the purchased product". Clearly, the seven suppliers are equipped or capable of doing the same type of job or different jobs depending each scenario or economic decisions. In other word, doing the same type of work or different type of work is not a critical issue since the alliance members are designed to handle any of the work required, same or different, depending on well known product parameters such as cost, design, availability, etc.

VAN HOEK fairly teaches the claimed invention except for further specific limitation in step (a) of 1<sup>st</sup> function (manufacturing) alliance comprising a plurality of manufacturer alliance members, every member of the alliance being configured to perform operations associated with the 1<sup>st</sup> function (manufacturing) of the product. However, on page 7, lines 30-32, discloses the integration of *"by a number of 1<sup>st</sup> tier suppliers of which seven are fully integrated into the final assembly plant"*, lines 52-54, *"close participation of the suppliers in the final assembly of the car, but the suppliers are also strongly involved in the development, planning and launching of the product"*, therefore, it would have been obvious to modify a portion of the teaching of VAN HOEK as disclosed in steps (a) - (e) above by including a 1<sup>st</sup> function (manufacturing) alliance comprising a plurality of manufacturer alliance members (suppliers), every member

(supplier) of the alliance being configured to perform operations associated with the 1<sup>st</sup> function (manufacturing) of the product as taught in another portion shown on page 7 indicated above.

Alternatively, in another similar virtual business integration model involving "SCM", HAMMER discloses the carrying out of step (a) above (some of the suppliers are responsible for manufacturing along with the manufacturer.... Members of the virtual enterprise are tightly woven together) for the benefit of concentrating on processes at which you can be world-class or focus on their core competencies and rely on someone else (outsourcers) to perform the rest in a fast-moving technology, increase competition and the rise of the Internet {see page 2, lines 1-12, page 1, lines 1-10, 30-33, 40-43}. HAMMER discloses that this is one the most important Internet application (global computer network) for company to survive and be the best {see page 1, lines 1-5, lines 29-40}. It would have been obvious to modify the teachings of VAN HOEK by modifying step (a) as taught by HAMMER for the benefit cited above. Note that steps (d) and (e) are also taught in HAMMER page 1, lines 7-10 and 35-37.

**As for dep. claim 2** (part of 1), which deals with other well known business functions parameters, i.e. material and material alliance (beside manufacturing and distributing as in claim 1), this is non-essential limitation to the scope of the claimed invention and is fairly taught in VAN HOEK page 7, lines 30-55 "suppliers of materials/products/parts" or HAMMER page 2, lines 1-5 "vehicle and parts suppliers". The connection of another alliance, material alliance is inherently included or would have been obvious in view of the teachings of VAN HOEK on page 1, lines 46-47, "in

purchasing, manufacturing and shipment". As for the limitation of "to perform a same type", this is rejected for the same reason set forth in claim 1 above.

**As for dep. claim 4** (part of 1), which deals with other well known business functions parameters, i.e. connection of distributor with warehouse or storage/storing area, this is non-essential limitation to the scope of the claimed invention and is fairly taught in VAN HOEK page 2, line 58 "storing finished goods", page 8, lines 10-15 "*store the appropriate components*".

**As for dep. claims 5-7** (part of 1), which deals with other well known business information flow (exchange/interchange/dialogue) parameters, i.e. product, financial, etc., these are non-essential limitation to the scope of the claimed invention and are fairly taught in VAN HOEK page 1, lines 35-40, page 2, lines 1-7. Alternatively, the inclusion of other well known information of business parameter such as material/product, information, marketing and finance, etc., would have been obvious as mere monitoring other well known business information in the virtually integrated supply chain of VAN HOEK.

**As for dep. claim 8** (part of 1), which deals with other well known business information flow parameters, i.e. contracting related information, this is non-essential limitation to the scope of the claimed invention and shown in page 2, lines 5-7, 40-44, page 8, lines 20-40.

**As for dep. claim 9** (part of 1), the limitation of virtual regional hubs or distribution centers located regionally is taught on page 8, lines 5-10, or page 1, lines 30-40, wherein it's well known that computer parts for Dell are made throughout the

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world such as Taiwan, China, Malaysia, Mexico, etc., and the parts are assembled and sold in the United States and therefore, virtual regional hubs are created outside the United States to communicate effectively. Moreover, it's well known to an artisan that the degree/effectiveness of coordination/control varies with the number of alliances, the type of organization, geographical locations of each alliance (supplier or manufacturer), operating time of each alliance, etc., therefore, the adjusting of the control degree or effectiveness is considered as optimizing operating conditions or result effective variables and the optimizing of result effective variables is considered as routine experimentation to determine optimum or economically feasible reaction conditions and would have been obvious to the skilled artisan. In re Aller, 105 USPQ 233. For example, if the alliances is scattered throughout the globe, i.e. China, Philippine, Europe, Africa, U.S., it would have been obvious to form regional hub to effectively coordinate the communication between the alliances due to the large distance between each alliance.

**As for dep. claim 10** (part of 1), which deals with well known business parameters to facilitate responsiveness in upstream integration with suppliers and downstream integration with suppliers and customers, i.e. automatically triggering financial transaction upon integrating of financial flows and information flows, or in other word, triggering an invoice or collection upon completing shipping an order to a customer, this automatic triggering concept is fairly taught in VAN HOEK page 6, lines 15-24 for ordering products at point of sale or HAMMER page 2, lines 20-23.

Alternatively, the application of virtual information flows monitoring and management to

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other well known business transaction parameters, such as finance, payment, billing, credit/collection, etc., would have been obvious to a skilled artisan as mere applying the same modeling process to other well known or similar business parameters to complete a business transaction for a product in view of the teaching of monitoring all information related to the manufacturing and selling of product as taught by VAN HOEK above.

**As for independent model claim 11**, which is a computer-implemented virtual business model to transact business for a product of claim 1 above, it's also rejected (2<sup>nd</sup> time) for the same reason set forth in claim 1 above with respect to the model limitation.

**As for dep. claims 12, 14-20** (part of 11), which have the same limitations as in dep. claims 2, 4-10 above, they are rejected (2<sup>nd</sup> time) for the same reasons set forth in dep. claims 2, 4-10 above.

**5. Dependent claims 7, 10 are rejected (2<sup>nd</sup> time) under 35 U.S.C. 103(a) as being unpatentable over VAN HOEK alone or VAN HOEK /HAMMER as applied to claims 1-2, 4-10 above, and further in view of LEWIS et al (Article 1997).**

The teachings of VAN HOEK or VAN HOEK /HAMMER are cited above. As for dep. claims 7, 10, in a similar business environment for virtual business enterprise due to outsourcing and sub-contracting and the calling for a "value-added partnerships (or strategic alliances)", LEWIS et al is cited to control of information flows in a virtual flow train or rail wherein the information includes other well known business information such as financial flow (purchase order, waybills, and payments) to complete the management of a business transaction of a product or service (see pages 2, 3, 4, especially lines 15-



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20, page 5, lines 36-40, ). It would have been obvious to modify the process of VAN HOEK alone or VAN HOEK / HAMMER to include other well known financial information as taught by LEWIS et al to complete the management of a business transaction of a product/service and/or completion of the Supply Chain Management or Logistics Processes Management. Moreover, it would have been obvious to modify the process of VAN HOEK alone or VAN HOEK /HAMMER to clearly and definitively provide a plurality of virtual alliances for the manufacturing and distribution in view of the teaching of a “value-added partnerships (or strategic alliances)” as mentioned by LEWIS et al above.

### ***Response to Arguments***

6. Applicant's arguments filed 09/13/2005 have been fully considered but they are not persuasive.

(1) Applicant's comment that the SCM disclosed in Van Hoek does not disclose that the members, each of which is “**capable of**” performing the same task is noted; however, as indicated in the rejection of claim 1 above, this is not positively claimed in a method claim since it merely further limits an “object” of the “providing” step or “members” in the step and not the step of “providing” in this case. In other word, it merely limits the type of members or adding features to the members which are not critical. Also, “being configured” merely means “being equipped” or “**capable of**” (as shown in Applicant's response, 9-13-05, pages 10-13) to do something in the future, such as performing a same type of operation associated with manufacturing or

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distribution of product, thus having little or nearly no patentable weight in a method claim. Moreover, this is inherently taught in VAN HOEK pages 2, 3 with an example on page 7, par. 4-6, , "...number of 1<sup>st</sup> tier suppliers of which seven are fully integrated into the final assembly plant", .."... together these seven suppliers supply 50% of the total value of the purchased product". Clearly, the seven suppliers are equipped or **capable of** doing the same type of job or different jobs, depending each scenario or economic decisions. In other word, doing the same type of work or different type of work is not a critical issue since the alliance members are designed to handle any of the work required, same or different, depending on well known product parameters such as cost, design, availability, etc.

(2) Applicant's argument, similar to the one above, but with respect to "same type of operations associated with distribution of the manufactured product" is noted, however, the teaching of "distribution" is taught in VAN HOEK alone or VAN HOEK /HAMMER and the issue of "same type" is discussed above.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

No claims are allowed.

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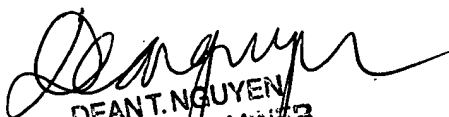
8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail [CustomerService3600@uspto.gov](mailto:CustomerService3600@uspto.gov).

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor John Weiss may be reached at (571) 272-6812. The FAX phone numbers for formal communications concerning this application are (703) 872-9306. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

dtn  
December 20, 2005

  
DEAN T. NGUYEN  
PRIMARY EXAMINER